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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1, 2, and 3

[Docket No. APHIS-2014-0059]

RIN 0579-AD99

Thresholds for De Minimis Activity and Exemptions From Licensing under the Animal Welfare Act

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Animal Welfare Act (AWA) regulations in response to a 2014 Farm Bill amendment to the Act that provides the Secretary of Agriculture with the authority to determine that animal dealers and exhibitors are not required to obtain a license under the Act and regulations if the size of the business conducting AWA-related activities is determined to be de minimis by the Secretary. The Animal and Plant Health Inspection Service has reviewed past compliance with the Animal Welfare Act of currently-regulated facilities and has determined that de minimis businesses, as defined in the rule are capable of providing adequate care and treatment of the animals involved in regulated business activities. We also propose amending the regulations in response to a 2013 amendment to the Act that excludes from the definition of “exhibitor” some owners of household pets that are exhibited occasionally, generate less than a substantial portion of income, and reside exclusively with the owner. Dealers and exhibitors operating at or below the thresholds determined for their

particular AWA-related business activity would be exempted from Federal licensing requirements established under the Act and regulations. Our proposed actions would amend the regulations to be consistent with the Act while continuing to ensure the humane care and treatment of animals covered under the AWA.

DATES: We will consider all comments that we receive on or before [Insert date 90 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0059>.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2014-0059, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0059> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Kay Carter-Corker, DVM, Director, National Policy Staff, USDA-APHIS-Animal Care, 4700 River Road Unit 84, Riverdale, MD 20737; (301) 851-3748.

## SUPPLEMENTARY INFORMATION:

### Background

Under the Animal Welfare Act (AWA or the Act, 7 U.S.C. 2131 et seq.), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, operators of auction sales, and carriers and intermediate handlers. The Secretary has delegated responsibility for administering the AWA to the Administrator of U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS). Within APHIS, the responsibility for administering the AWA has been delegated to the Deputy Administrator for Animal Care. Regulations and standards established under the AWA are contained in the Code of Federal Regulations (CFR) in 9 CFR parts 1, 2, and 3 (referred to below as the regulations). Part 1 contains definitions for terms used in parts 2 and 3; part 2 provides administrative requirements and sets forth institutional responsibilities for regulated parties; and part 3 contains specifications for the humane handling, care, treatment, and transportation of animals covered by the AWA.

The AWA seeks to ensure the humane handling, care, treatment, and transportation of animals intended for use by dealers, research facilities, and exhibitors, operators of auction sales, and carriers and intermediate handlers. Dealers (including breeders meeting the definition of "dealer") and exhibitors of such animals must obtain licenses and comply with AWA regulations and standards, and their facilities are inspected by APHIS for compliance.

### Exclusions and Exemptions in the Act

The Act defines "animal" in § 2132(g) specifically as any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warm-blooded animal, as the Secretary may determine is being used, or is intended for use, for research, testing,

experimentation, or exhibition purposes, or as pets; but such term excludes birds, rats of the genus Rattus, and mice of the genus Mus, bred for use in research; horses not used for research purposes; and other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber; for improving animal nutrition, breeding, management, or production efficiency; or for improving the quality of food or fiber. With respect to a dog, the term means all dogs including those used for hunting, security, or breeding purposes. Animals that do not fall under the definition of “animal” in the Act are excluded from regulation and licensing.

In addition to the exclusions provided to persons under the definition of “animal,” the Act contains exclusions for certain persons who buy, sell, transport, or exhibit animals that are covered under the Act. Under the definition of “dealer” in § 2132, the Act excludes retail pet stores that do not sell any animals to a research facility, an exhibitor, or a dealer. Prior to its amendment by the 2014 Farm Bill,<sup>1</sup> the Act also excluded from the definition of “dealer” any person who does not sell or negotiate the purchase of any wild animal, dog, or cat and who derives no more than \$500 gross income from the sale of other animals during any calendar year.

The definition of “exhibitor” under § 2132(h) of the Act excludes retail pet stores, an owner of a common, domesticated household pet who derives less than a substantial portion of income from a nonprimary source (as determined by the Secretary) for exhibiting an animal that exclusively resides at the residence of the pet owner, organizations sponsoring and all persons participating in State and county fairs, livestock shows, rodeos, purebred dog and cat shows, and any other fairs or exhibitions intended to advance agricultural arts and sciences, as may be determined by the Secretary.

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<sup>1</sup> The Agricultural Act of 2014: <http://www.gpo.gov/fdsys/pkg/BILLS-113hr2642enr/pdf/BILLS-113hr2642enr.pdf>.

Section 2133 of the Act establishes a requirement for licensing of dealers and exhibitors but excludes retail pet stores from the licensing requirement. Prior to its amendment by the 2014 Farm Bill, the Act also specifically excluded from licensing any person “who derives less than a substantial portion of income (as determined by the Secretary) from the breeding and raising of dogs or cats on his own premises and sells any such dog or cat to a dealer or research facility.”

#### Business Size-Based Exemptions in the AWA Regulations

The current regulations include, among others, licensing exemptions based on the size of the business with respect to the number of breeding female animals maintained or gross income from the sale of animals. These exemptions are explained below.

#### Retail Exemptions

Reflecting what is stated in § 2132 of the Act, § 2.1(a)(3)(i) of the AWA regulations affirms that retail pet stores are exempt from the licensing requirements. However, the Act itself provides no specific definition for the term “retail pet store.” In a 2013 final rule,<sup>2</sup> we defined a retail pet store to mean “a place of business or residence at which the seller, buyer, and the animal available for sale are physically present so that every buyer may personally observe the animal prior to purchasing and/or taking custody of that animal after purchase, and where only the following animals are sold or offered for sale, at retail, for use as pets: Dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gophers, chinchillas, domestic ferrets, domestic farm animals, birds, and coldblooded species.” Prior to this change, the regulations referred to “retail pet store” as simply an “outlet” where the animals listed above were sold at retail, with no specific requirement that customers personally observe the animal prior to purchasing or taking custody of it. As a consequence, many large Internet-based retailers claiming the exemption

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<sup>2</sup> September 18, 2013; 78 FR 57227-57250 (Docket No. APHIS-2011-0003).

were able to sell and ship pets to buyers sight unseen without the benefit of public or APHIS oversight to ensure humane treatment of their animals. The business model practiced by such Internet-based retailers selling pets bore no resemblance to a retail pet store in existence at the time the provision was originally promulgated in the Act.

Our intent in amending the definition of “retail pet store” was to narrow the scope of the exemption to apply only to retailers who sell exclusively in face-to-face transactions so that pets sold by exempted retailers continue to be monitored for their humane care and treatment by the buying public. We made these changes to ensure that the definition of “retail pet store” was consistent with the original intent of the Act and to bring more pet animals sold at retail under its protection.

In the rulemaking to define “retail pet store,” we also preserved an exemption in § 2.1(a)(3)(vii) for purebred dog and cat fanciers with four or fewer breeding female dogs, cats, and/or small exotic or wild mammals who sell only the offspring of these animals and who, because of the size of their businesses, are capable of providing adequate care and treatment for the animals involved in regulated business activities without Federal licensing and inspection requirements to ensure animal welfare.

## Wholesale Exemption

Section 2.1(a)(3)(iii) exempts from licensing any person maintaining four or fewer breeding female dogs, cats, and/or small exotic or wild mammals, and who sells, at wholesale,<sup>3</sup> only the offspring of those animals born and raised on his or her premises, for use as pets or exhibition. As was the case with retailers, we determined that wholesalers with four or fewer breeding females who sell only the offspring are capable of providing adequate care and treatment for the animals involved in regulated business activities without Federal licensing and inspection requirements to ensure animal welfare.

## Income-Based Exemption

The current AWA regulations also include the income-based exemption from licensing that was in § 2132(f)(ii) of the Act prior to its amendment by Congress in the 2014 Farm Bill. The \$500 gross income limit for persons who sell animals other than wild or exotic animals, dogs, or cats excludes such persons from the definition of “dealer” in § 1.1 of the regulations and therefore exempts them from the licensing requirement in § 2.1(a)(3)(ii). The rationale for establishing this exemption was to conform the regulations to the 1970 statutory amendment to the Act.

## 2014 Farm Bill Amendments to the Act

In the 2014 Farm Bill, Congress amended § 2133 of the Act by giving the Secretary the authority to set thresholds for regulated activities involving animals under which businesses could be exempted from licensure as a dealer or exhibitor “if the size of business is determined by the Secretary to be de minimis.” The amendment provides APHIS with greater authority to exempt small businesses conducting AWA-related activities from licensing and inspection,

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<sup>3</sup> “Wholesale” means the sale of animals to other persons for resale.

allowing us to direct our oversight and enforcement efforts on larger businesses conducting regulated activities.

Congress noted in its Conference Report<sup>4</sup> that this legislation codifies the exemption we made to the regulations<sup>5</sup> in § 2.1(a)(3)(vii) for purebred dog and cat fanciers, and/or breeders of small exotic or wild mammals, who maintain four or fewer breeding females and sell the offspring at retail for pets or exhibition. Dealers qualifying for this licensing exemption are capable of providing adequate care and treatment for the animals involved in regulated business activities without Federal licensing and inspection requirements to ensure animal welfare. We made this same determination for wholesalers with four or fewer breeding females, who are exempted under § 2.1(a)(3)(iii). We therefore intend to retain these exemptions, with four or fewer breeding female dogs, cats, and small exotic or wild mammals sold at wholesale.

We emphasize that the thresholds in the current exemptions for dealers are based on the total number of breeding females of all species combined on a premises, not four breeding female animals per each species. For example, if a breeder selling AWA-covered species at retail or wholesale has a total of three breeding female dogs and two breeding female guinea pigs, that breeder could not claim an exemption, as the total number of AWA-covered breeding females the person maintains is five breeding females and exceeds the threshold of four breeding females. We would apply the same provision to any person seeking a de minimis exemption for breeding females under our proposed changes. We expect, however, that most wholesale and retail dealers eligible for a de minimis exemption under this proposal are already eligible for the current licensing exemptions in § 2.1(a)(3) of the regulations.

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<sup>4</sup> See pg. 562: <http://www.gpo.gov/fdsys/pkg/CRPT-113hrpt333/pdf/CRPT-113hrpt333.pdf>.

<sup>5</sup> See footnote 2.

In addition to dealers, in section 12308 of the 2014 Farm Bill, Congress amended the Act (7 U.S.C. 2132) to provide the Secretary with the authority to establish a de minimis exemption from licensing for exhibitors. In determining de minimis thresholds for such businesses, we would consider the risk to the humane care and treatment of animals, the total number of AWA-regulated animals maintained, the type of activity for which the animals are being used, and/or the number of days per year the animals are exhibited.

#### Contingency Plans Rule

On December 31, 2012, we published a final rule<sup>6</sup> establishing regulations under which research facilities, dealers, exhibitors, intermediate handlers, and carriers must meet certain requirements for contingency planning and training of personnel. However, on July 31, 2013, we issued a stay<sup>7</sup> of those regulations so that we could further consider the impact of plan requirements on regulated entities, taking into account different needs according to the type and size of their AWA-regulated business activities.

One issue that warranted further review was the impact of contingency planning and other licensing requirements on exhibitors whose businesses involve small numbers of animals. While these exhibitors do not typically pose risks to animal welfare, there was no legal mechanism for exempting them from licensing and contingency planning requirements as de minimis businesses. The amendment to the Act makes it possible to lift the stay on the Agency's contingency plan rule by allowing APHIS to determine certain exhibitors to be de minimis based on the size of their AWA-regulated business activities. We will review the impact of the AWA amendment on the contingency plan rulemaking and consider lifting the stay pending the final outcome of this rulemaking.

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<sup>6</sup> Docket No. APHIS-2006-0159 (77 FR 76815-76824).

<sup>7</sup> 78 FR 46255.

## Proposed Changes to the Regulations

### Definitions

In response to the amendments made to the Act, we propose to amend the definitions of dealer and exhibitor in § 1.1, “Definitions.”

#### Dealer

In § 1.1 of the regulations, dealer is defined as any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of: Any dog or other animal whether alive or dead (including unborn animals, organs, limbs, blood, serum, or other parts) for research, teaching, testing, experimentation, exhibition, or for use as a pet; or any dog at the wholesale level for hunting, security, or breeding purpose. The term excludes retail pet stores, as defined in the regulations, any retail outlet where dogs are sold for hunting, breeding, or security purposes; or any person who does not sell or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than \$500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats during any calendar year.

The 2014 Farm Bill amended the definition of “dealer” in § 2132(f) of the Act by striking language from the definition that excluded “any person who does not sell, or negotiate the purchase or sale of any wild animal, dog, or cat, and who derives no more than \$500 gross income from the sale of other animals during any calendar year.”

We propose to make the definition of dealer in § 1.1 of the regulations consistent with the Act. We would do so by striking the statement that excludes as a dealer “any person who does not sell or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than \$500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats during any calendar year.”

## Exhibitor

In 2013, Congress amended<sup>8</sup> the Act to exclude from the definition of “exhibitor” “an owner of a common, domesticated household pet who derives less than a substantial portion of income from a nonprimary source (as determined by the Secretary) for exhibiting an animal that exclusively resides at the residence of the pet owner.” We propose to amend the definition of exhibitor in § 1.1 of the regulations by adding this exclusion to it, thereby making it consistent with the definition in the Act. While we have not defined “substantial portion of income” in the proposed regulation, we interpret this to mean that the income generated from exhibition is the main source of the person’s income. We interpret less-than-substantial income to mean the exhibition generates a minimal amount of money and does not constitute a main source of the person’s income. We seek comment on this interpretation and whether we should add it to the regulatory text.

## De Minimis Exemptions to Licensing

We propose to make changes and additions to the licensing exemptions in § 2.1(a)(3) so that the AWA regulations are consistent with the Act, as amended. These changes include adding de minimis exemption requirements in new paragraphs § 2.1(a)(3)(ix) through § 2.1(a)(3)(xii) and including a table summarizing the de minimis exemption thresholds in a new paragraph § 2.1(a)(3)(xiii).

The de minimis exemptions would apply only to the activities of those dealers and exhibitors that fall under the scope of the Act and are not already excluded or exempted from APHIS licensing and inspection. We note that the Act excludes from regulation farm animals that are used or intended for use as food or fiber, or for improving animal nutrition, breeding,

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<sup>8</sup> S.3666; Public Law No: 112-261.

management, or production efficiency. Accordingly, the AWA regulations exclude farm animals used under certain circumstances from the definition of “animal” in § 1.1 and exempt other animals used for food and fiber in § 2.1(a)(3)(vi). None of these regulations would be changed by this proposal. However, farm animals used or exhibited for regulated purposes, such as petting zoos, would continue to fall under the scope of the Act unless they otherwise qualify for a de minimis exemption from licensing.

As noted previously, we propose no changes to the current retail licensing exemptions in § 2.1(a)(3)(i) and (a)(3)(iii) or the exemption in § 2.1(a)(3)(vii), and persons exempted under these provisions would not be affected by this proposal. Retailers exempted under the retail pet store licensing exemption who sell the offspring of their breeding females solely in face-to-face customer transactions would not be affected by the proposed de minimis requirements, regardless of the number of breeding females they maintain. However, to make the regulations consistent with the amended Act, we are proposing to remove in its entirety the \$500 gross income exemption from licensing currently in § 2.1(a)(3)(ii). This exemption parallels the exclusion we are proposing to remove from the definition of dealer in § 1.1. In its place, we would add language that exempts from licensing any person whose business is determined by APHIS to be de minimis in accordance with the proposed regulations in § 2.1(a)(3).

We propose in a new § 2.1(a)(3)(ix) to establish a de minimis exemption for any person who maintains a total of four or fewer breeding female dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep, and who sells, at retail or wholesale, only the offspring of these animals, which were born and raised on his or her premises, and is not otherwise required to obtain a license. As is the case with the current licensing exemptions, this de minimis exemption from licensing as a dealer would not extend to any person residing in a household that collectively maintains a total of more than four such breeding female animals,

regardless of ownership, nor to any person maintaining such breeding female animals on premises on which more than four such breeding female animals are maintained, nor to any person acting in concert with others where they collectively maintain a total of more than four such breeding female animals, regardless of ownership. The animals listed as eligible for the proposed de minimis exemption were chosen because they are common domesticated animals with a well-established history of known welfare standards. Again, businesses already exempted under current licensing exemptions would not be affected by this proposed exemption, nor would sales of farm animals be affected if they are sold for the purpose of improving animal nutrition, breeding, management, or production efficiency, or for food or fiber.

#### Exhibitor Exemptions

As indicated above, we also propose to establish de minimis thresholds for some businesses engaged in AWA-covered exhibition activities. This action would exempt exhibitors considered to be de minimis from licensing if they meet the proposed thresholds and relieve them of the requirement to perform the reporting and recordkeeping activities associated with licensing.

The de minimis thresholds we propose to include for exhibitors would be based on the size of their AWA-related business activity as measured by the total number of animals maintained, the type of exhibitor activity, and/or the duration of exhibition (as measured in days). However, there are situations that preclude de minimis consideration for certain exhibitors. In the Conference Report accompanying the 2014 Farm Bill amendments to the Act, Congress indicated that “an exhibitor’s business must not be considered de minimis merely because the facility operates as a non-profit corporation, nor is the exhibition of a small number of dangerous animals (including, but not limited to, big cats, bears, wolves, nonhuman primates, or elephants) de minimis.”

In a new § 2.1(a)(3)(x), we would establish a de minimis licensing exemption for people in a household who in total maintain four or fewer dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep, for exhibition and who houses the animals at a site for year-round exhibition, and is not otherwise required to obtain a license. This exemption for a license as an exhibitor would not extend to any person residing in a household that collectively maintains a total of more than four such animals, regardless of ownership, nor to any person maintaining such animals on premises on which more than four such animals are maintained, nor to any person acting in concert with others where they collectively maintain a total of more than four such animals, regardless of ownership.

Based on our extensive knowledge and experience of animals used for year-round exhibition purposes, we determined the threshold for this exemption to be four, as exhibitors with a small number of common, domesticated, non-dangerous animals are capable of providing adequate care and treatment for the animals involved in regulated business activities, based on compliance data on currently licensed exhibitors.

In a new § 2.1(a)(3)(xi), we would also include de minimis licensing exemptions for certain persons using animals in seasonal exhibitions. The exemption would apply to any person who maintains a total of eight or fewer dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep, for seasonal exhibition only, and who exhibits any or all of the animals for no more than 30 days per calendar year, and is not otherwise required to obtain a license. This exemption would not extend to any person residing in a household that collectively maintains a total of more than eight such animals, regardless of ownership, nor to any person maintaining eight such animals on premises on which more than eight such animals are maintained, nor to any person acting in concert with others where they collectively maintain a total of more than eight such animals, regardless of ownership.

We determined the de minimis threshold for seasonal exhibition to be eight common, domesticated, non-dangerous animals based on the fact that, unlike animals exhibited year-round, animals exhibited seasonally are displayed to the public for a minimal period of time (30 days or less each year) during holiday seasons such as Easter, Halloween, Thanksgiving, and Christmas<sup>9</sup>.

We based our determination of 30 or fewer days for this exemption on our experience with inspecting seasonal exhibitors holding a small number of common, domesticated, non-dangerous animals, which indicates that exhibitors with animals displayed to the public for 30 days or less annually are capable of providing adequate care and treatment for the animals involved in the exhibition.

Persons exhibiting regulated animals not included in the proposed thresholds table would not be eligible for a de minimis exemption, regardless of the duration (as measured in days) for which the animals are exhibited. For example, camels, bison, and reindeer are sometimes included in seasonal holiday exhibits, but their behavior and size set them apart from common, non-dangerous domestic livestock displayed in such exhibits, and under the regulations they are considered to be wild or exotic species.

In 2013, Congress amended<sup>10</sup> the definition of “exhibitor” in the Act to exclude certain persons as exhibitors, namely “any owner of a common, domesticated household pet who derives less than a substantial portion of income from a nonprimary source (as determined by the

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<sup>9</sup> Thirty days or less is consistent with the average number of days when many exhibitors are displaying animals intermittently or infrequently for limited duration (as measured in days). Examples of such exhibitions include, but are not limited to, seasonal petting zoos (e.g. exhibits open for Halloween or from Thanksgiving to Christmas), college game mascots, magic shows, rabbits used for photo shoots during Easter season (half hour sessions over a 2-3 week period; petting zoos with farm animals during pumpkin harvest season (lasting less than 30 days), and nativity scenes during the Christmas season (usually 21-30 days).

<sup>10</sup> See footnote 8.

Secretary) for exhibiting an animal that exclusively resides at the residence of the pet owner.” In order to make the regulations consistent with the Act, we propose to add this amendment to the list of exclusions under the definition of “exhibitor” in § 1.1 of the regulations.

The exclusion from the definition of “exhibitor” under the Act is only applicable to persons meeting all the criteria listed in the amendment. Similarly, under our proposed revision of “exhibitor” in the regulations, a person exhibiting other than a “common, domesticated household pet” would not be eligible for the exclusion. Also, persons who derive their primary source of income from exhibiting the animals, or who generate a substantial amount of money from such exhibition as determined by APHIS, would not be eligible for the exclusion. We interpret “less than a substantial portion of income” in the Act to mean a minimal amount of money that the owner makes from exhibiting animals. We interpret “a nonprimary source” to mean the activity is not a full-time job or primary source of income.

Many persons eligible for this exclusion employ one or more common, domesticated household pets in intermittent or infrequent exhibition, such as brief film and television appearances. Based on the industry pay rates for pet animal film work<sup>11</sup> and on our experience from working with small exhibitors, we determined that persons with four or fewer common domesticated household pet animals that are exhibited infrequently or intermittently generate a less than substantial portion of income and therefore meet the requirements for the exclusion. By being excluded from the definition of “exhibitor”, they are not required to be licensed.

Therefore, we propose to include a regulatory licensing exemption in a new § 2.1(a)(3)(xii) for any person who maintains a total of four or fewer common, domesticated

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<sup>11</sup> According to the Screen Actors Guild-American Federation of Television and Radio Artists 2013 pay rate scale for background actors, the average pay per background appearance in a film or television production ranges from \$39 to \$224.

household pet animals, who uses them for intermittent or infrequent exhibition for no more than 30 days per calendar year, who derives less than a substantial portion of income from a nonprimary source for exhibiting such animals, whose animals reside exclusively at the residence of the owner, and who is not otherwise required to obtain a license. This exemption would not extend to any person residing in a household that collectively maintains a total of more than four pet animals, regardless of ownership, nor to any person maintaining pet animals on premises on which more than four pet animals are maintained, nor to any person acting in concert with others where they collectively maintain a total of more than four pet animals, regardless of ownership.

We determined the total number of animals for this exemption to be four because our experience indicates that exhibitors who maintain and exhibit four or fewer animals and those who exhibit resident pet animals infrequently or intermittently (i.e., no more than 30 days per year) for minimal amounts of money are capable of providing adequate care and treatment for the animals involved in the regulated business activities without Federal licensing and inspection requirements to ensure animal welfare. Additionally, exhibitors with four or fewer animals are less likely to generate a substantial income as a primary source from exhibiting such animals compared to persons exhibiting with larger numbers of animals as the primary source of income.

For easier reference, we also propose adding to the regulations a new § 2.1(a)(3)(xiii) that includes a summary table of the de minimis threshold requirements included in paragraphs (a)(3)(ix) through (a)(3)(xii).

The proposed thresholds are ultimately based on our experience that businesses conducting AWA-regulated activities with the animals indicated for each threshold present a minimal risk to animal welfare and therefore do not require APHIS licensing and inspection. However, the list of animals eligible for de minimis consideration is not intended to be

exhaustive. We encourage public comment on the proposed exemption thresholds as they pertain to animal welfare and effects on businesses engaged in the breeding, dealing, or exhibition of animals. We also invite comments on the types of exhibition proposed in the table, particularly with regard to types of animals and exhibition business models that may not be represented here.

### Miscellaneous

We are also proposing to amend the regulations to remove a redundant provision. We would remove from § 2.1(c)(2) the phrase “and, in the case of a license renewal, the annual license fee has been received by the appropriate Animal Care regional office on or before the expiration date of the license.” This phrase is unnecessary because the same provision is repeated in paragraph (d)(1) of that section. In addition, we are proposing to remove §§ 3.28(b), 3.53(b), and 3.80(b)(1). These sections contain obsolete sheltering and minimum space requirements for dogs, cats, guinea pigs, hamsters, rabbits, and nonhuman primates that have been since replaced by updated sheltering and minimum space requirements. Removal of the obsolete requirements will minimize confusion with the current regulatory requirements and will have no impact on facilities and animal welfare. Similarly, we are revising § 3.6(a)(2)(xii) to remove phase-in dates which are no longer needed regarding primary enclosures for dogs and cats.

### Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This proposed rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, and an initial regulatory flexibility analysis that examines the potential economic effects of this proposed rule on small

entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov).

A 2014 Farm Bill amendment to the Animal Welfare Act provides the Secretary of Agriculture with the authority to determine when animal dealers and exhibitors are not required to obtain a license under the Act if the size of the business conducting AWA-related activities is determined by the Secretary to be de minimis. Businesses considered to be de minimis are capable of providing adequate care and treatment to the animals involved in the regulated business activities without Federal licensing and inspection requirements to ensure animal welfare. This proposal would establish de minimis thresholds for businesses engaged in breeding, selling, or exhibiting certain regulated animals and include the thresholds in the regulations. We would measure business size using various criteria, including number of breeding female animals maintained, number of animals exhibited, and the duration of exhibition (as measured in days). We are also amending the AWA regulations in response to a 2013 amendment to the Act excluding from the statutory definition of “exhibitor” owners of household pets that are exhibited infrequently or intermittently, generate less than a substantial portion of income, and reside exclusively with the owner. Dealers and exhibitors operating at or below the thresholds determined for their particular business activity would be exempted from Federal licensing requirements established under the Animal Welfare Act. These proposed actions would amend the regulations to be consistent with the Act while continuing to ensure the humane care and treatment of animals.

APHIS’ experience indicates that exhibitors who maintain or infrequently exhibit a small number of certain common non-dangerous animals are capable of providing adequate care and

treatment to the animals involved in regulated business activities without Federal licensing and inspection requirements to ensure animal welfare. Because of the size of the business and their ability to provide adequate care and treatment, we consider such businesses to be engaged in a de minimis level of regulated activities. Establishing de minimis thresholds for exclusion or exemption from the AWA licensing requirements outlined in this proposal would allow APHIS to direct inspection and enforcement efforts on larger businesses conducting such activities.

By the very nature of this proposal, all entities that would be affected are considered small. The entities most likely to be affected by this proposal are businesses engaged in AWA-related exhibition activities that have small numbers of regulated animals. This proposed rule would relieve regulatory responsibilities for some currently licensed entities and reduce the cost of business for those entities. Those currently licensed exhibitors and dealers (including breeders meeting the definition of “dealer”) who are under the proposed de minimis thresholds would no longer be subject to licensing, animal identification, and recordkeeping requirements.

The cost of a license for the smallest entities is between \$40 and \$85 annually. Identification tags for dogs and cats cost from \$1.12 to \$2.50 each. Other covered animals can be identified by a label attached to the primary enclosure containing a description of the animals in the enclosure at negligible cost. We estimate that the average currently licensed entity potentially affected by this proposal spends about 10 hours annually to comply with the licensing paperwork and recordkeeping requirements. All of the currently licensed entities that would be considered de minimis under this proposal would benefit from reduced costs for licensing, identification, and recordkeeping. We estimate that approximately 212 currently licensed exhibitors, breeders, and dealers would no longer require licensing following implementation of this proposal (See the economic analysis for more detail on how we estimated this). We estimate that the cost savings for all these entities could total about \$41,400 annually.

Based on our review of available information, APHIS does not expect the proposed rule to have a significant economic impact on small entities. We have prepared the initial regulatory flexibility analysis because we need public input to help establish the total number of entities that will be affected. While we have yet to determine the total number of entities that would fall below the thresholds we propose, those entities that do fall below the thresholds would benefit from the rule. Those currently licensed entities that do not fall below the thresholds would see no additional economic impact as a result of this rule. In the absence of apparent significant economic impacts, we have not identified alternatives that would minimize such impacts.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

#### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

#### Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government

and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Animal and Plant Health Inspection Service has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, APHIS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

#### Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

#### List of Subjects in 9 CFR Parts 1, 2, and 3

Animal welfare, Marine mammals, Pets, Reporting and recordkeeping requirements, Research, Transportation.

Accordingly, we propose to amend 9 CFR parts 1, 2, and 3 as follows:

#### PART 1—DEFINITION OF TERMS

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 2131-2159; 7 CFR 2.22, 2.80, and 371.7.

2. Section 1.1 is amended as follows:

a. By revising the definition of dealer.

b. By revising the definition of exhibitor.

The revisions read as follows:

#### § 1.1 Definitions.

\* \* \* \* \*

Dealer means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of: Any dog or other animal whether alive or dead (including unborn animals, organs, limbs, blood, serum, or other parts) for research, teaching, testing, experimentation, exhibition, or for use as a pet; or any dog at the wholesale level for hunting, security, or breeding purposes. This term does not include: A retail pet store, as defined in this section; or any retail outlet where dogs are sold for hunting, breeding, or security purposes.

\* \* \* \* \*

Exhibitor means any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary, and such term includes carnivals, circuses, and zoos exhibiting such animals whether operated for profit or not; but such term excludes retail pet stores, an owner of a common, domesticated household pet who derives less than a substantial portion of income from a nonprimary source (as determined by the Secretary) for exhibiting an animal that exclusively resides at the residence of the pet owner, organizations sponsoring and all persons participating in State and country fairs, livestock shows, rodeos, purebred dog and cat shows, and any other fairs or exhibitions intended to advance agricultural arts and sciences, as may be determined by the Secretary.

\* \* \* \* \*

## PART 2—REGULATIONS

3. The authority citation for part 2 continues to read as follows:

Authority: 7 U.S.C. 2131-2159; 7 CFR 2.22, 2.80, and 371.7.

4. Section 2.1 is amended as follows:

a. By revising paragraph (a)(3)(ii).

b. By adding paragraphs (a)(3)(ix) through (a)(3)(xiii).

c. By revising paragraph (c)(2).

The revisions and additions read as follows:

§ 2.1 Requirements and application.

(a) \* \* \*

(3) \* \* \*

(ii) Any person whose AWA-related business activity is determined by APHIS to be de minimis in accordance with the regulations in this section;

\* \* \* \* \*

(ix) Any person who maintains a total of four or fewer breeding female dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep, and who sells, at retail or wholesale, only the offspring of these dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep, which were born and raised on his or her premises, and is not otherwise required to obtain a license. This exemption does not extend to any person residing in a household that collectively maintains a total of more than four breeding female dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep, regardless of ownership, nor to any person maintaining breeding female dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep on premises on which more than four breeding female dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep are maintained, nor to any person acting in concert with others where they collectively maintain a total of more than four breeding female dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep, regardless of ownership.

(x) Any person who maintains a total of four or fewer dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep, for exhibition and houses the animals

permanently at the site where they are exhibited year-round, and is not otherwise required to obtain a license. This exemption does not extend to any person residing in a household that collectively maintains a total of more than four dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep, regardless of ownership, nor to any person maintaining dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep on premises on which more than four dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep are maintained, nor to any person acting in concert with others where they collectively maintain a total of more than four dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep, regardless of ownership.

(xi) Any person who maintains a total of eight or fewer dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep, for seasonal exhibition and exhibits any or all of the animals for no more than 30 days per calendar year, and is not otherwise required to obtain a license. This exemption does not extend to any person residing in a household that collectively maintains a total of more than eight dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep, regardless of ownership, nor to any person maintaining eight dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep on premises on which more than eight dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep are maintained, nor to any person acting in concert with others where they collectively maintain a total of more than eight dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep, regardless of ownership.

(xii) Any person who maintains a total of four or fewer common, domesticated, non-dangerous household pet animals for infrequent or intermittent exhibition for no more than 30 days per calendar year, who derives less than a substantial portion of income from a nonprimary source for exhibiting such animals, whose animals reside exclusively at the residence of the

owner, and who is not otherwise be required to obtain a license. This exemption would not extend to any person residing in a household that collectively maintains a total of more than four pet animals, regardless of ownership, nor to any person maintaining pet animals on premises on which more than four pet animals are maintained, nor to any person acting in concert with others where they collectively maintain a total of more than four pet animals, regardless of ownership.

(xiii) Following is a summary of the de minimis exemption requirements for paragraphs (ix) to (xii) of this section:

Table 1.—De Minimis Thresholds for Exemption From Licensing

Animals	Activity	De Minimis Thresholds (exempt from licensing if at or below all indicated thresholds)		
		Number of Breeding Females	Number of Total Animals	Maximum Number of Days Exhibited per year (any or all animals exhibited)
Dogs Cats Rabbits Hamsters Guinea pigs Chinchillas Cows Goats Pigs Sheep	Breeding/selling retail (unless covered by another exemption <sup>1</sup> )	4		NA
	Breeding/selling wholesale (unless covered by another exemption <sup>2</sup> )	4		NA
	Exhibition of all types (unless listed below)		4	No maximum
	Seasonal exhibition (for example nativity scenes and petting zoos operating part of the year)		8	30 days
Common, domesticated pet animals living in owner's residence	Infrequent or intermittent exhibitions (for example, film and television appearances, team mascots, canine disc competitions, magic shows) from which less than a substantial portion of income from a nonprimary source is derived.		4	30 days

Farm animals bred, sold, exhibited, or otherwise used solely for agricultural purposes and animals used solely for food or fiber are exempt from the licensing requirements of this section.

<sup>1</sup> Includes retail businesses exempted under paragraphs (a)(3)(i) and (a)(3)(vii) of this section.

<sup>2</sup> Includes wholesale businesses exempted under paragraph (a)(3)(iii) of this section.

\* \* \* \*

(c) \* \*

(2) The applicant has paid the application fee of \$10 and the annual license fee indicated in § 2.6 to the appropriate Animal Care regional office for an initial license.

\* \* \* \* \*

## PART 3—STANDARDS

5. The authority citation for part 3 continues to read as follows:

Authority: 7 U.S.C. 2131-2159; 7 CFR 2.22, 2.80, and 371.7.

6. Section 3.6 is amended as follows:

a. By revising paragraph (a)(2)(xii).

b. By removing paragraph (b)(1)(i).

c. By removing paragraph (b)(1)(ii) introductory text.

d. By redesignating paragraphs (b)(1)(iii) and (b)(1)(iv) as paragraphs (b)(1)(iv) and b)(1)(v) respectively.

e. By redesignating paragraphs (b)(1)(ii)(A), (b)(1)(ii)(B), and (b)(1)(ii)(C) as paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iii) respectively.

The revision reads as follows:

### § 3.6 Primary enclosures.

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(xii) If the suspended floor of a primary enclosure is constructed of metal strands, the strands must either be greater than 1/8 of an inch in diameter (9 gauge) or coated with a material such as plastic or fiberglass. The suspended floor of any primary enclosure must be strong enough so that the floor does not sag or bend between the structural supports.

\* \* \* \* \*

### § 3.28 [Amended]

7. Section 3.28 is amended as follows:

- a. By removing paragraph (b).
- b. By redesignating paragraph (c) as paragraph (b).
- c. In the heading of newly redesignated paragraph (b), by removing the words “acquired on or after August 15, 1990”.
- d. In newly redesignated paragraph (b)(2)(iii), by removing the words “paragraph (c)(2)(iv)” and adding the words “paragraph (b)(2)(iv)” in their place.
- e. In newly redesignated paragraph (b)(3), by removing the words “paragraph (c)(1) or (c)(2)” and adding the words “paragraph (b)(1) or (b)(2)” in their place.

§ 3.53 [Amended]

8. Section 3.53 is amended as follows:

- a. By removing paragraph (b).
- b. By redesignating paragraph (c) as paragraph (b).
- c. In the heading of newly redesignated paragraph (b), by removing the words “acquired on or after August 15, 1990”.
- d. In newly redesignated paragraph (b)(3), by removing the words “paragraph (c)(2)” and adding the words “paragraph (b)(2)” in their place.

9. Section 3.80 is amended as follows:

- a. By removing paragraph (b)(1).
- b. By removing the paragraph (b)(2) introductory text.
- c. By redesignating paragraphs (b)(2)(i), (b)(2)(ii), (b)(2)(iii), and (b)(2)(iv), as paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) respectively.
- d. In newly redesignated paragraph (b)(1), footnote 4, by removing the words “paragraph (b)(2)(ii)” and adding the words “paragraph (b)(2)” in their place.

e. In newly redesignated paragraph (b)(2), by removing the words “paragraph (b)(2)(i)” and adding the words “paragraph (b)(1)” in their place.

f. In newly redesignated paragraph (b)(4), by removing the words “paragraph (b)(2)(i)” and adding the words “paragraph (b)(1)” in their place.

g. By revising paragraph (c).

The revision reads as follows:

§ 3.80 Primary enclosures.

\* \* \* \* \*

(c) Innovative primary enclosures not precisely meeting the floor area and height requirements provided in paragraph (b) of this section, but that do provide nonhuman primates with a sufficient volume of space and the opportunity to express species-typical behavior, may be used at research facilities when approved by the Committee, and by dealers and exhibitors when approved by the Administrator.

\* \* \* \* \*

Done in Washington, DC, this 29<sup>th</sup> day of July 2016.

Edward Avalos,

Under Secretary for Marketing and Regulatory Programs.

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